



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, RP, LRE, RR, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Tenant SR (the tenant) confirmed that the tenants received the landlord's 1 Month Notice posted on their door by the landlord's agent at this hearing (the agent) on July 2, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the agent confirmed that the landlord received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on July 17, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one

another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Are the tenants entitled to a monetary award for the reduction in the value of their tenancy? Should any orders be issued for repairs of this rental property? Should any other orders be issued with respect to this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Although there is no written tenancy agreement between the parties, the tenant gave undisputed sworn testimony that the tenants moved into an upper level rental unit in this four plex on October 2013. When the tenancy began, the tenant said that the monthly rent was set at \$1,400.00, payable in advance on the first of each month. The tenant testified that the monthly rent rose to \$1,612.00 earlier this year and to \$1,652.30 as of two months ago.

The landlord's 1 Month Notice identifying an effective date of July 31, 2019 sought an end to this tenancy for the following reasons:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

The landlord's only written evidence to support the issuance of the 1 Month Notice were copies of hydro bills for this property and a photograph, which the agent said appeared to show the male tenant removing a marijuana plant from the rental unit. The agent testified that they had attempted to obtain a copy of a police report of a visit by the police to the rental unit as a result of the landlord's suspicion that the tenants were running a grow operation from the rental unit. The agent said that they were unable to obtain copies of that report in time for this hearing, although they did have a Police Report File Number.

The tenant denied the landlord's allegations that the tenants had been running a grow operation from the rental unit. The tenant said that the photograph in question was of a tomato plant being moved to a different portion of the yard. The tenant gave sworn testimony and written evidence that the landlord has been attempting to evict them for a long time as the landlord believes that more monthly rent could be obtained from this rental unit than the tenants are currently paying.

The tenants' application for a monetary award of \$1,200.00 was based on the landlord's alleged failure to abide by the terms of a settlement agreement that they entered into when an arbitrator appointed pursuant to the *Act* issued a July 3, 2018 decision (see above) regarding a previous application by the tenants to cancel a 1 Month Notice and to require the landlord to comply with the provisions of the *Act*. At that hearing, the then agent for the landlord agreed to the following terms, recorded in the previous arbitrator's decision:

1. *The Notice is withdrawn. The tenancy shall continue until ended in accordance with the Residential Tenancy Act.*
2. *The Landlord's agent shall attend the rental property on July 4, 2018 to:*
 - a. *address the issue of any rodents in the rental unit and rental property; and*
 - b. *inspect the window coverings and determine if any window coverings (which came with the rental unit) can be disposed of and shall record his conclusions in an email to the Tenants.*
3. *By no later than July 17, 2018, the Landlord's agent shall retain the services of at least two professional roofing companies to inspect and report on the condition of the roof. The Landlord's agent shall request that the roofing company provide their recommendations in writing, which shall be provided to the Tenants within 2 days of receipt of same.*
4. *By no later than September 1, 2018, the Landlord shall:*
 - a. *have the furnace professionally serviced;*
 - b. *have the gutters cleaned, repaired and replaced if required; and,*

- c. ascertain the status of the wood burning fireplace in terms of the Landlord's property insurance and shall advise the Tenants as to whether the fireplace can continue to be used.*
- 5. In the event the fireplace can continue to be used, the Tenants shall be at liberty to hire a professional chimney cleaning company to clean and inspect the chimney and shall be permitted to recover this expense by a one time equivalent reduction in their rent.*
- 6. The Tenants shall have the vents and duct work inspected and cleaned and shall be permitted to recover this expense by a one time equivalent reduction in their rent...*

The tenant provided undisputed sworn testimony that very few if any of the commitments made by the landlord's agent as outlined in the July 3, 2018 decision were implemented by the landlord. The tenants sought a monetary award for the reduction in the value of their tenancy resulting from the landlord's failure to implement the repairs and maintenance that were included in the settlement agreement of July 3, 2018, as well as the tenants' loss of quiet enjoyment of the premises as a result of the landlord's frequent and ongoing practice of visiting the rental property and allegedly harassing the tenants there.

Although the agent was not managing this property when the previous application was heard by the previous arbitrator in July 2018, the agent did provide estimates of how long it would take to secure various companies to implement the commitments made in July 2018 that have not been done or have not led to the alleviation of the tenants' concerns.

During the hearing, the tenant and the agent reviewed the extent to which each of the commitments made in the July 2018 decision have been addressed. The agent gave sworn testimony as to the estimated time frame it would take to retain companies who would be able to inspect the work required and to take corrective action if such action were required. I list these in the order outlined in the July 3, 2018 decision.

The tenant testified that there is a continuing problem with rodents infesting this rental property. Other than providing the tenants with rat traps, the tenant alleged that the landlord has not taken effective action to engage pest control specialists to identify a solution and take corrective measures. The tenant said that they should not be

responsible for removing rats on an ongoing basis from the traps the landlord provided to them. The tenant disputed the agent's claim that this was purely a seasonal issue and alleged that they can hear rats climbing through the walls and floors between them and the rental unit below their suite.

The agent said the rental unit is in area that is currently being redeveloped and that rodents are being uprooted from their existing nesting locations. Based on the agent's experience, the agent said that it might become costly and unnecessary to have pest control specialists monitor rat traps at this property on an ongoing basis. The agent estimated that it would take three to four weeks to retain a pest control company and have that company visit the site and initiate a rodent control program.

The tenant did acknowledge that the landlord took action to examine and dispose of the window coverings that were the subject of Clause 2(b) of the July 3, 2018 settlement agreement (the previous settlement agreement).

The tenant testified that the landlord only partially complied with Clause 3 of the previous settlement agreement. The tenant gave undisputed sworn testimony that the landlord did hire a professional roofing company, albeit after the July 17, 2018 deadline identified in Clause 3 of that agreement. The tenant said that no second company was retained to provide an estimate. The tenant gave undisputed sworn testimony that the landlord refused to implement the solutions identified as necessary by the roofing company that undertook the inspection and estimate. The tenant said that one of their relatives, a professional roofer, viewed the property recently and warned them that the condition of the roof was rapidly deteriorating to the point where major structural damage could result if it is not repaired or replaced very quickly.

The agent did not deny the tenant's claim that the roof needs repairs. The agent said that they are planning to have a second roofing contracting company visit the site shortly. Once that occurs, the agent expects that the landlord will be able to budget for the necessary roof repairs within another 12 to 14 months.

Clauses 4, 5 and 6 of the previous settlement agreement were somewhat linked as the tenant was given the option of retaining professional duct cleaning and chimney cleaning if allowed, and to reduce their monthly rent by an equivalent amount. The tenant gave undisputed sworn testimony that the landlord never arranged for the cleaning of the furnace, nor any of the work related to the cleaning, replacement or repair of the gutters. The tenant said that the landlord informed them that they could not

use the wood fireplace, although it was unclear if the landlord ever actually contacted their insurance company in accordance with Clause 4(c) of their previous settlement agreement. The tenant testified that they did contact a company that performed duct cleaning, but that the landlord refused the \$500.00 estimate that was provided by that company to the tenants.

The agent testified that they had already arranged for a certified furnace specialist to service the furnace in a nearby building for the following day, September 11, 2019. The agent said that they would arrange for that furnace specialist to service and inspect the furnace in the tenants' building on September 11, 2019.

The agent also testified that it would likely only take a week or two to retain someone to clean, repair and, if necessary replace the gutters in this rental property, the commitment previously made at Clause 4(b) of the previous settlement agreement.

The tenant maintained that an inspection of the wood burning fireplace has not yet occurred and that the landlord was responsible for cleaning the chimney to enable this to happen if the landlord's insurance policy allows tenants to burn wood in a cleaned chimney. The tenant said that when this tenancy began, they understood that they would be allowed to use the wood burning fireplace. The agent was uncertain as to whether the landlord had obtained clarification from their insurance company as to whether the landlord's policy would remain in effect should the tenants be permitted to use that fireplace to burn wood.

The agent testified that they could retain a company to clean the vents and ducts in this rental unit, including the dryer vent within a week of this hearing.

The tenants' application also referenced a broken shower that they had repaired with duct tape, but which should be repaired or replaced. The agent said that they would take action to have this repaired very soon.

The tenant also provided written evidence and sworn testimony that the landlord frequently interferes with the tenants and other tenants in this property and that the landlord's unannounced visits cause the tenants much stress. The tenant maintained that the landlord has on occasion threatened their spouse, the other tenant, and that the landlord has been pursuing an ongoing campaign to evict the tenants for no reason other than to obtain more rent once their tenancy ends. The tenant requested the issuance of an order restricting the landlord's access to the rental property, especially

now that the landlord has hired a professional agent to look after tenancies at this property,

The agent said that the landlord has a garage at the rear of this property where the landlord keeps tools and other possessions and that the garage is not a part of any of the tenancies in these properties. The agent testified that is unlikely that the landlord will be attending the property as much as occurred in the past.

Analysis -Tenants' Application to Cancel the 1 Month Notice

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

In this case, I find on a balance of probabilities that the landlord has produced very little evidence to justify ending this tenancy for cause for the reasons cited in the 1 Month Notice. As noted at the hearing, arbitrators appointed pursuant to the *Act* have no access to Police Reports, unless the parties produce a copy of such reports that they have obtained. The provision of a Police Report File Number reveals only that the police were called; it provides no information as to what if anything was discovered by police when they attend a site.

The landlord's photo of one of the tenants near a plant, which the landlord maintained was marijuana and the tenant maintained was a tomato plant, falls very far short of the threshold required to demonstrate that this tenancy should be ended for cause. The landlord's provision of hydro bills as evidence that the tenants have been using the rental unit as a grow operation is speculative at best, especially given the tenants evidence that the landlord's failure to have the ducts and vents in this rental unit cleaned has required the tenants to run their dryer three and four times in order to dry their clothes.

For these reasons, I allow the tenants' application to cancel the landlord's 1 Month Notice. That Notice is set aside and is of no continuing force or effect.

Analysis - Tenants' Application for Repairs

Section 32(1) of the *Act* establishes the following responsibilities for a landlord:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the landlord has failed to conduct any meaningful type of program to deal with the rodent infestation in this rental property. For these reasons, I order the landlord to retain a licensed pest control specialist or company and have them inspect the rental property and commence and continue an ongoing pest control program by October 1, 2019. In the event that this process has not been initiated and a program has not been undertaken by October 1, 2019, the tenants will be allowed to reduce their monthly rent for October 2019 by \$100.00. If this program is not in place by November 1, 2019, the tenants will be allowed to reduce their monthly rent by a further \$100.00 (i.e., \$200.00 in total). This process of reducing rent by an additional \$100.00 for each succeeding month of the landlord's non-compliance with this order to retain a licensed pest control specialist and have them inspect the rental property and commence and continue an ongoing pest control program will continue until the month following the landlord's compliance with this order. The tenants' rent will then revert to the previous amount subject to the provisions of this decision.

While the present condition of the current roof on this structure is unknown, the importance of a proper functioning roof in a rental property ensuring the health and safety of the residents is emphasized by their inclusion as examples in a list of eligible components of a tenancy that would qualify for "emergency repairs" set out in paragraph 33(1)c)(i) of the *Act*.

Since this roofing issue was supposed to have been addressed as a way of implementing the July 3, 2018 settlement agreement, and little action has been taken, I order the landlord to retain a professional roofing company to conduct a second inspection of the condition of the roof of this rental property by October 1, 2019. As was the case in Clause 3 of the previous settlement agreement, I order the landlord or the agent on the landlord's behalf to request that the roofing company provide their report and recommendations in writing, and to forward a copy of their report and

recommendations to the tenants within two days of receiving them from the roofing company.

I have also given the agent's estimate of the time it will take to obtain a second opinion on the condition of the roof and to undertake the necessary roof repairs careful consideration. I find that a further delay of at least 12 to 14 months as was recommended by the agent would not be in accordance with the provisions of section 32(1) of the *Act*. A delay of this length of time would also constitute a reduction in the value of this tenancy as the landlord would then not be providing the tenants with the services and facilities that they expected to receive when they entered into this tenancy. Based on the evidence before me, I order the landlord to commence any recommended roofing repairs by December 1, 2019.

In the event that the landlord does not abide by all of the orders outlined above with respect to the roof of this rental property (i.e., retain a second professional roofing company to inspect and report on the condition of the roof by October 1, 2019; provide the tenant with a copy of the report and recommendations by the second professional roofing company within two days of receiving it from the roofing company; **and** commence the recommended roofing repairs by December 1, 2019), the tenants will be allowed to reduce their monthly rent by \$100.00 per month. For each succeeding month where the landlord has failed to abide by the terms of each of the roofing related orders outlined above, the tenants will be allowed to reduce their monthly rent by a further \$100.00 (i.e., \$200.00 in total for the second month of a failure to abide by the terms of the orders relating to the roof of this dwelling). This process of reducing rent by an additional \$100.00 for each succeeding month of the landlord's non-compliance with this order will end in the month following the landlord's completion of the recommended repairs to the roof of this building.

I order the landlord to have the furnace serviced by a certified furnace specialist by September 15, 2019. In the event that this does not occur by October 1, 2019, the tenants will be allowed to reduce their monthly rent by \$50.00 until the month after this servicing occurs.

I order the landlord to clean, repair and if necessary replace the gutters by October 1, 2019. In the event that this does not occur by October 1, 2019, the tenants will be allowed to reduce their monthly rent by \$50.00 until the month after this servicing occurs.

I order the landlord to contact their insurance company if that has not already happened to clarify whether the landlord's insurance policy would remain in effect should the tenants be allowed to burn wood in their fireplace. In the event that this activity is not allowed by the landlord's insurance company, I find that the value of this tenancy has been reduced and that the tenants will be allowed to reduce their monthly rent by \$50.00 per month for the duration of their tenancy. I make this order pursuant to paragraph 65(1)(f) of the *Act*, which allows me to reduce future rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

In the event that the landlord's insurance policy does not prevent the tenants from using the wood burning fireplace, I order the landlord to retain a professional chimney cleaning company or individual to clean the tenants' chimney by October 1, 2019. In the event that this does not happen by October 1, 2019, the tenants will be allowed to reduce their monthly rent by \$50.00 until the month after this chimney cleaning is completed.

I order the landlord to retain a professional duct cleaning service to clean all of the ducts and vents in this rental unit, including the dryer vent, by September 20, 2019. In the event that this servicing does not occur by October 1, 2019, the tenants will be allowed to reduce their monthly rent by \$50.00 until the month after this cleaning occurs.

Analysis - Tenants' Application for a Monetary Order

Section 28 of the *Act* outlines tenants' rights to quiet enjoyment of their premises in the following terms:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

Paragraphs 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

65 *(1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds*

that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

- (c) that any money paid by a tenant to a landlord must be
 - (i) repaid to the tenant,*
 - (ii) deducted from rent, or*
 - (iii) treated as a payment of an obligation of the tenant to the landlord other than rent;**
- (f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;..*

In this case, I find that there is ample evidence that would demonstrate that features of this tenancy that the tenants expected to receive when they entered into this tenancy have not been provided to an adequate extent by the landlord. There is also some evidence that the landlord has been interfering with the tenants' quiet enjoyment of the premises as the landlord continues to attend the rental property, although these visits may revolve around a garage that continues to hold some of the landlord's possessions.

When the tenants applied to cancel the landlord's previous 1 Month Notice, representatives of the landlord and the tenants agreed to specific terms to settle the tenants' application to have orders issued against the landlord. Based on the undisputed evidence before me, the landlord has failed to abide by the terms of the July 3, 2018 settlement agreement. The landlord once more chose to enlist the services of an agent to represent the landlord's interests in this matter, an agent who had little knowledge of the extent to which the landlord complied with the terms of the settlement agreement.

When the tenants agreed to the terms outlined in the previous arbitrator's July 3, 2018 decision, they reasonably expected that the landlord would abide by these terms agreed to by the landlord's then agent. Since I find that there is compelling undisputed evidence and testimony that this has not occurred, the tenants have been forced to live with the situation as it presented itself in 2018, and which prompted the tenants to apply for the issuance of orders against the landlord at that time to require the landlord to abide by the provisions of the *Act*. Based on the tenants' undisputed sworn testimony and written evidence, conditions in this tenancy have not improved, and if anything, have continued to deteriorate.

Under these circumstances, I find sufficient evidence to issue a monetary award in the tenants' favour in the amount of the \$1,200.00 they have requested in their application. I do so, as I find on a balance of probabilities that the landlord's failure to comply with the terms of their settlement agreement of July 3, 2018 has led to a loss in the value of their tenancy of at least \$100.00 per month since this matter was last before an arbitrator appointed pursuant to the *Act* in July 2018.

Since the tenants have been successful in their application, I also allow them to recover their \$100.00 filing fee from the landlord.

Conclusion

I allow the tenants' application to cancel the 1 Month Notice. That Notice is set aside and of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I also allow the tenants' application for a monetary award of \$1,300.00, which enables the tenants a monetary award for the loss in the value of their tenancy and to recover their filing fee from the landlord. The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. As this tenancy is continuing, the tenants may also decide to withhold \$1,300.00 from a future rent payment to the landlord.

As noted above, I also order the tenants to withhold amounts of monthly rent in the event that the landlord does not take the required action ordered of the landlord in my decision by the dates specified in my decision. Once these actions outlined below have been taken and completed, the tenants' monthly rent reverts to the amount that they would otherwise be paying each month.

1. I order the landlord to retain a licensed pest control specialist or company and have them inspect the rental property and commence and continue an ongoing pest control program by October 1, 2019.

In the event that this process has not been initiated and a program has not been undertaken by October 1, 2019, the tenants will be allowed to reduce their monthly rent for October 2019 by \$100.00. If this program is not in place by

November 1, 2019, the tenants will be allowed to reduce their monthly rent by a further \$100.00 (i.e., \$200.00 in total). This process of reducing rent by an additional \$100.00 for each succeeding month of the landlord's non-compliance with this order to retain a licensed pest control specialist and have them inspect the rental property and commence and continue an ongoing pest control program will continue until the month following the landlord's compliance with this order.

2. I order the landlord to retain a professional roofing company to conduct a second inspection of the condition of the roof of this rental property by October 1, 2019. I order the landlord or the agent on the landlord's behalf to request that the roofing company provide their report and recommendations in writing, and to forward a copy of their report and recommendations to the tenants within two days of receiving them from the roofing company. I order the landlord to commence any recommended roofing repairs by December 1, 2019.

In the event that the landlord does not abide by all of the orders outlined above with respect to the roof of this rental property (i.e., retain a second professional roofing company to inspect and report on the condition of the roof by October 1, 2019; provide the tenant with a copy of the report and recommendations by the second professional roofing company within two days of receiving it from the roofing company; **and** commence the recommended roofing repairs by December 1, 2019), the tenants will be allowed to reduce their monthly rent by \$100.00 per month. For each succeeding month where the landlord has failed to abide by the terms of each of the roofing related orders outlined above, the tenants will be allowed to reduce their monthly rent by a further \$100.00 (i.e., \$200.00 in total for the second month of a failure to abide by the terms of the orders relating to the roof of this dwelling). This process of reducing rent by an additional \$100.00 for each succeeding month of the landlord's non-compliance with this order will end in the month following the landlord's completion of the recommended repairs to the roof of this building.

3. I order the landlord to have the furnace serviced by a certified furnace specialist by September 15, 2019. In the event that this does not occur by October 1, 2019, the tenants will be allowed to reduce their monthly rent by \$50.00 until the month after this servicing occurs.
4. I order the landlord to clean, repair and if necessary replace the gutters by October 1, 2019. In the event that this does not occur by October 1, 2019, the

tenants will be allowed to reduce their monthly rent by \$50.00 until the month after this servicing occurs.

5. I order the landlord to contact their insurance company if that has not already happened to clarify whether the landlord's insurance policy would remain in effect should the tenants be allowed to burn wood in their fireplace. In the event that this activity is not allowed by the landlord's insurance company, I find that the value of this tenancy has been reduced and that the tenants will be allowed to reduce their monthly rent by \$50.00 per month for the duration of their tenancy. In that event, the normal monthly rent for this tenancy will be set at \$1,602.30, instead of the current monthly rent of \$1,652.30.

In the event that the landlord's insurance policy does not prevent the tenants from using the wood burning fireplace, I order the landlord to retain a professional chimney cleaning company or individual to clean the tenants' chimney by October 1, 2019. In the event that this does not happen by October 1, 2019, the tenants will be allowed to reduce their monthly rent by \$50.00 until the month after this chimney cleaning is completed.

6. I order the landlord to retain a professional duct cleaning service to clean all of the ducts and vents in this rental unit, including the dryer vent, by September 20, 2019. In the event that this servicing does not occur by October 1, 2019, the tenants will be allowed to reduce their monthly rent by \$50.00 until the month after this cleaning occurs.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 10, 2019

Residential Tenancy Branch